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Supreme Court of the United States

OCTOBER TERM, 1943

No. 327

MRS. REGINALD REICHMAN,
Petitioner,

against

COMPAGNIE GENERALE TRANSATLANTIQUE,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Statement

The petitioner, who was a passenger on a West Indies cruise of the respondent's steamship Champlain in February, 1937, asks this Court to review a determination of the New York Court of Appeals sustaining the validity of a provision of the contract of passage limiting respondent's liability for baggage and personal property to $250 in the absence of a declaration of a higher value and payment of an additional fare. The action was tried in the New York Supreme Court, New York County, where a directed verdict was granted in favor of the petitioner for $250 in accordance with respondent's motion (R. 111). The judgment of the Supreme Court, entered upon the verdict, was affirmed without opinion by the Appellate Division of the Supreme Court, First Department, 263 App. Div. 983 (R. 131). It was again affirmed by the

New York Court of Appeals, 290 N. Y. 344 (R. 134), and thereafter a motion for reargument was denied by the Court of Appeals (R. 138).

The Question Presented

The petitioner's statement purporting to set forth the question presented, to be found at page 2 of the petition herein, is an argumentative and inaccurate summary of the matters that were presented to and passed upon by the Court of Appeals. The passenger placed her property, which was conceded at the trial to have a value of $13,360, in a sealed deposit envelope in the ship's safe, from which it was thereafter stolen or lost. Respondent conceded its liability to the extent of $250 in accordance with the limitation contained in the following provisions of the contract of passage:

> "4. REGULATIONS AND LIMITATIONS OF CARRIER'S LIABILITY WITH RESPECT TO PERSONAL PROPERTY.
>
> (a) The term 'baggage' as used herein means only trunks, handbags, valises, satchels and bundles, containing such wearing apparel and personal effects as are necessary and appropriate to the purpose of the journey and to the passenger's station in life.
>
> * * * * * *
>
> (g) Each first-class passenger represents, and it is hereby agreed, that the total value of his baggage, as defined in section 4(a) of this contract, does not exceed $150, and that the total value of all other property taken with him on the voyage, and carried on his person or retained in his possession, does not exceed $100; * * *. The Carrier's liability, if any (and whether or not excess baggage is carried and paid for) shall not exceed the above amount in the event of loss, damage or delay to any of the passenger's property taken with him on the voyage, the fare for the voyage and the rate of excess baggage tariff being in part based upon the above valuation. Nevertheless,

each passenger may, prior to embarkment, deliver a declaration in writing, specifying a higher value, to the Carrier at 610 Fifth Avenue, New York, N. Y., U. S. A., or at 6 Rue Auber, Paris, France, or to the Carrier's baggage master, and pay an additional amount of 1% of the excess of value thus specified over the said amount, for which a written receipt must be obtained, in which case the Carrier's liability shall not exceed such specified value.

(h) A reasonable amount of space in a deposit box or safe on board, if the steamer is so equipped, will be allowed each passenger upon request, but, in consideration of the Carrier's furnishing such deposit box or safe without extra cost to passengers, and inasmuch as no charge is made therefor, it is mutually agreed that the Carrier's liability, if any, for loss of, or damage to, the deposit made therein by the passenger shall not be increased by reason of a deposit being made."

In affirming the judgments of the lower courts denying the passenger's right to recover more than $250, the Court of Appeals held in an opinion by Judge Lewis (R. 140-145):

(1) that the passenger's act of acceptance of the passage contract gave rise to an implication of her assent to its terms (quoting from Judge Cardozo's opinion in *Murray* v. *Cunard Steamship Co.*, 235 N. Y. 162);

(2) that the agreed valuation clause, "reasonable in its terms and * * * authorized by the settled law of this jurisdiction", did not evade liability for the entire loss, but placed upon the plaintiff's property "a valuation which establishes the measure of defendant's limited responsibility in the event liability is established";

(3) that had the passenger desired to evaluate her property at a higher figure and pay the additional fare required by the contract, she could have protected herself in full against the loss of her valuables;

(4) that the claim for conversion was insufficient to defeat the agreed valuation clause in the absence of evidence that the defendant converted the property to its own benefit or was guilty of an affirmative act of wrongdoing (*D'Utassy* v. *Barrett,* 219 N. Y. 420).

The petitioner's assertion (Petition, p. 2) that the passage contract gave no alternative rate by which a passenger could take money or jewelry on board for use on the voyage unless such property were to be shipped under a cargo bill of lading was flatly rejected by the Court of Appeals.

POINT I

No federal question was decided by the New York Court of Appeals.

Neither in her pleadings nor in her proof did petitioner assert the existence of a federal question. She now takes the extraordinary position that the Harter Act (U. S. Code, Title 46, §§ 190, *et seq.*) is in some manner applicable to the present controversy and thus that a federal question is presented. The argument seems to be this: (1) that under petitioner's interpretation of the contract (rejected by every court) the passenger could obtain an increased valuation for her property only by shipping it under a cargo bill of lading, (2) that the Harter Act applies to bill of lading shipments, and (3) that this presents a federal question. As might be expected the statute in question was not even mentioned in the majority opinion of the Court of Appeals. The sole matter before that Court was to rule upon the plain provisions of the contract, not under federal law but in the light of the settled public policy of the State of New York.

POINT II

The decision sought to be reviewed is not in conflict with *The Kensington*, 183 U. S. 263.

The purported conflict with the decision of this Court in *The Kensington*, 183 U. S. 263, is wholly fictitious. The provisions of the contract in *The Kensington* were totally different from the contract in the case at bar. There the passenger was required in every instance where he wished to increase the carrier's liability above the stipulated amount, and without regard to the nature of the property, to secure the issuance of a cargo bill of lading. The facts of that case were so obviously different that the Court of Appeals did not even consider it necessary to distinguish it from the case at bar.

CONCLUSION

The decision of the Trial Court has twice been reviewed and twice affirmed. No federal question and no other question of any great public importance is involved. It is inconceivable that the matter should require a further review by this Court.

Respectfully submitted,

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